

Did Not Pass

MONTANA LEGISLATIVE HISTORY

Chapter _____ 19 75

Bill H 82 S _____

Original bill & history _____ C

H. Committee on Judiciary

Hearing Date(s) 1-21 ☒ C

2-3 ☒ C

_____ C

_____ C

Date Out _____ C

S. Committee on Judiciary

Hearing Date(s) 3-6 ☒ C

3-17 ☒ C

_____ C

_____ C

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Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

1 House BILL NO. 82
2 INTRODUCED BY Dussell, Hiloy, Harper
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CONFORM THE EMINENT
5 DOMAIN POWER GRANTED TO REGULATED PUBLIC UTILITIES WITH THE
6 POWER GRANTED THE DEPARTMENT OF HIGHWAYS; REPEALING VARIOUS
7 GRANTS OF EMINENT DOMAIN POWER TO PERSONS NOT PUBLIC
8 UTILITIES, COOPERATIVES, OR PUBLIC AGENCIES; PROVIDING FOR
9 JUDICIAL REVIEW OF A PRESUMPTION OF NECESSITY; AMENDING
10 SECTIONS 15-2204, 93-9902, AND 93-9910, R.C.M. 1947; AND
11 REPEALING SECTIONS 50-801 THROUGH 50-816, R.C.M. 1947.
12

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 Section 1. Section 15-2204, R.C.M. 1947, is amended to
15 read as follows:

16 "15-2204. General powers. Each corporation shall have
17 power:

18 (a) To have perpetual existence by its corporate name
19 unless a limited period of duration is stated in its
20 articles of incorporation.

21 (b) To sue and be sued, complain and defend, in its
22 corporate name.

23 (c) To have a corporate seal which may be altered at
24 pleasure, and to use the same by causing it, or a facsimile
25 thereof, to be impressed or affixed or in any other manner

1 reproduced.

2 (d) To purchase, take, receive, lease, or otherwise
3 acquire, own, hold, improve, use and otherwise deal in and
4 with, real or personal property, or any interest therein,
5 wherever situated. ~~and to acquire property by proceedings~~
6 ~~in eminent domain~~

7 (e) To sell, convey, mortgage, pledge, lease, exchange,
8 transfer and otherwise dispose of all or any part of its
9 property and assets.

10 (f) To lend money to, to guarantee the obligations of
11 and to otherwise assist its employees and, upon the
12 affirmative vote of the holders of a majority of the
13 outstanding shares of the corporation which are entitled to
14 vote for directors, to lend money to, to guarantee the
15 obligations of and to otherwise assist its directors and
16 officers, but no loans shall be made by a corporation
17 secured by its shares.

18 (g) To purchase, take, receive, subscribe for, or
19 otherwise acquire, own, hold, vote, use, employ, sell,
20 mortgage, lend, pledge, or otherwise dispose of, and
21 otherwise use and deal in and with, shares or other
22 interests in, or obligations of, other domestic or foreign
23 corporations, associations, partnerships, joint ventures,
24 co-operatives or individuals, or direct or indirect
25 obligations of the United States or of any other government,

1 state, territory, governmental district or municipality or
2 of any instrumentality thereof.

3 (h) To make contracts and guarantees and incur
4 liabilities, borrow money at such rates of interest as the
5 corporation may determine, issue its notes, bonds, and other
6 obligations, and secure any of its obligations by mortgage
7 or pledge of all or any of its property, franchises and
8 income.

9 (i) To lend money for its corporate purposes, invest
10 and reinvest its funds, and take and hold real and personal
11 property as security for the payment of funds so loaned or
12 invested.

13 (j) To conduct its business, carry on its operations,
14 and have offices and exercise the powers granted by this act
15 in any state, territory, district, or possession of the
16 United States, or in any foreign country.

17 (k) To elect or appoint officers and agents of the
18 corporation, and define their duties and fix their
19 compensation.

20 (l) To make and alter bylaws, not inconsistent with its
21 articles of incorporation or with the laws of this state,
22 for the administration and regulation of the affairs of the
23 corporation.

24 (m) To make donations for the public welfare or for
25 charitable, religious, scientific or educational purposes,

1 and in time of war to make donations in aid of war
2 activities.

3 (n) In time of war to transact any lawful business in
4 aid of the United States in the prosecution of the war.

5 (o) To indemnify any director or officer or former
6 director or officer of the corporation, or any person who
7 may have served at its request as a director or officer of
8 another corporation in which it owns shares of capital stock
9 or of which it is a creditor, against claims, liabilities,
10 expenses and costs necessarily incurred by him in connection
11 with the defense, compromise or settlement of any action,
12 suit or proceeding, civil or criminal, in which he is made a
13 party by reason of being or having been such director or
14 officer, except in relation to matters as to which he shall
15 be adjudged in such action, suit or proceeding to be liable
16 for negligence or misconduct in the performance of duty to
17 the corporation, and to make any other indemnification that
18 shall be authorized by the articles of incorporation or by
19 any bylaw or resolution adopted by the shareholders after
20 notice.

21 (p) To pay pensions and retirement benefits and
22 establish pension plans, pension trusts, profit-sharing
23 plans, stock bonus plans, stock option plans, insurance
24 plans, and incentive plans for any or all of its directors,
25 officers and employees.

(q) To cease its corporate activities and surrender its corporate franchise.

(r) To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized."

Section 2. Section 93-9902, R.C.M. 1947, is amended to read as follows:

"93-9902. What are public uses. Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

1. All public uses authorized by the government of the United States.

2. Public buildings and grounds for the use of the state, and all other public uses authorized by the legislative assembly of the state, legislature.

3. Public buildings and grounds ~~for--the--use--of--any~~ county, ~~---city,---or--town,---or--school--districts,---canals,~~ aqueducts, ~~flumes,---ditches,---or--pipes--conducting--water,---heat,~~ or gas for the use of the inhabitants of any ~~---county,---city,~~ or town, ~~raising--the--banks--of--streams,---removing--obstructions~~ therefrom, ~~---and--widening,---deepening,---or--straightening--their~~ channels, roads, streets, and alleys, and all other public uses for the benefit of any county, city, or town, or school district, or the inhabitants thereof, which may be authorized by the ~~legislative assembly,~~ legislature; but the

mode of apportioning and collecting the costs of such improvements shall be such as may be provided in the statutes or ordinances by which the same may be authorized.

4. Wharves, ~~---docks,---piers,---chutes,---booms,---ferries,~~ bridges, ~~of--all--kinds,---private--roads,---plank--and--turnpike~~ roads, ~~---railroads,---canals,---ditches,---flumes,---aqueducts,---and~~ pipes for public transportation, ~~supplying--mines,---mills,---and~~ smelters for the reduction of ores and farming neighborhoods with water, ~~and--drainage--and--reclaiming--lands,---and--for~~ floating logs and lumber on streams not navigable, and sites Sites for reservoirs, necessary for collecting and storing water. Provided, however, that such reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

5. ~~---Roads,---tunnels,---ditches,---flumes,---pipes,---and--dumping~~ places ~~---for--working--mines,---mills,---or--smelters--for--the~~ reduction ~~---of--ores,---also--outlets,---natural--or--otherwise,---for~~ the flow, deposit, or conduct of tailings or ~~---refuse--matter~~ from ~~---mines,---mills---and--smelters--for--the--reduction--of--ores,~~ also an occupancy in common by the owners or the ~~---possessors~~ of ~~---different--mines--of--any--place--for--the--flow,---deposit,---or~~ conduct of tailings or ~~---refuse--matter--from--their--several~~ mines, ~~---mills,---or--smelters--for--reduction--of--ores,---and--sites~~ for reservoirs necessary for collecting and ~~---storing--water.~~ Provided, ~~---however,---that--such--reservoir--sites--must--possess--a~~

~~public-use-demonstrable-to-the-district-court-as-the-highest
and-best-use-of-the-land.~~

~~6. Private roads leading from highways to residences
or farms.~~

~~7. Telephone or electric light lines.~~

~~8. Telegraph lines.~~

9. 5. Sewerage of any city, county, or town, or any
subdivision thereof, whether incorporated or unincorporated,
or of any settlement consisting of not less than ten (10)
families, or of any public buildings belonging to the state,
or to any college or university.

~~10. Tramway lines.~~

~~11. Electric power lines.~~

~~12. Logging railways.~~

~~13. Temporary logging roads and banking grounds for
the transportation of logs and timber products to public
streams, lakes, mills, railroads, or highways, for such time
as the court or judge may determine, provided, the grounds
of state institutions be excepted.~~

6. Transportation, communications, or energy
distribution facilities furnished to the public by a
cooperative or by a utility corporation whose rates are
regulated by the public service commission, following a
hearing and order under section 70-305. The order creates a
disputable presumption:

(a) of the public necessity of the proposed facility;
(b) that the taking of the interest sought is
necessary therefor; and

(c) that the proposed facility is planned or located
in a manner which will be most compatible with the greatest
public good and the least private injury.

~~14. 7.~~ Underground reservoirs suitable for storage of
natural gas."

~~15. To mine and extract ores, metals or minerals owned
by the plaintiff located beneath or upon the surface of
property where the title to said surface vests in others,
provided, however, the use of the surface for strip mining
or open pit mining of coal (i.e., any mining method or
process in which the strata or overburden is removed or
displaced in order to extract the coal) is not a public use
and eminent domain may not be exercised for this purpose.~~

Section 3. Section 93-9910, R.C.M. 1947, is amended to
read as follows:

"93-9910. Who may defend--answer of defendant. All
persons named in the complaint, in occupation of, or
claiming an interest in, any of the property described in
the complaint, or in the amount to be awarded for the taking
thereof, though not named, may appear. The answer of each
appearing defendant must be filed and served upon the
plaintiff, or upon any attorney for plaintiff, within a

1 period of fifteen (15) days after the service of summons and
 2 complaint. The answer of each appearing defendant must
 3 contain a specific allegation as to the total amount which
 4 such defendant claims is reasonable and just for the taking
 5 of such defendant's lands or other real property or interest
 6 therein. If the answer of a defendant disputes a
 7 presumption created under sections 32-3904 or 70-305, the
 8 plaintiff shall file the record upon which the findings and
 9 order are based."

10 Section 4. There is a new R.C.M. section numbered
 11 70-305 that reads as follows:

12 Section 70-305. Procedure for obtaining eminent domain
 13 authority. (1) A corporation or other person furnishing
 14 railroad, telecommunications, electricity, natural gas or
 15 pipeline services, subject to rate regulation by the public
 16 services commission, or a cooperative furnishing any of
 17 these services, may acquire real property through eminent
 18 domain proceedings for a right-of-way when authorized as
 19 provided under this section and section 93-9911. The party
 20 seeking to acquire the property must obtain an order from
 21 the commission, or if the proposed use is regulated under
 22 the Utility Siting Act, from the board of natural resources
 23 and conservation.

24 (2) An order approving eminent domain proceedings
 25 under this section shall include findings, based upon a

1 record, that:

2 (a) public interest and necessity require the
 3 construction or completion by the applicant of the proposed
 4 facility for a public purpose recognized by statute;

5 (b) the interest described in the order and sought to
 6 be condemned is necessary for the facility; and

7 (c) the facility is planned and located in a manner
 8 which will be compatible with the greatest public good and
 9 the least private injury.

10 (3) The record supporting the findings shall be made
 11 by the hearing provided under section 70-809, if the
 12 proposed use is regulated under the Utility Siting Act, or
 13 by a substantially equivalent hearing conducted by the
 14 public service commission in other cases. The public
 15 service commission may make rules for the conduct of such
 16 hearings.

17 Section 5. Repealer. Sections 50-801 through 50-816,
 18 R.C.M. 1947, are repealed.

-End-

1975

house

JUDICIARY

COMMITTEE

44th Legislature

B.I. No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HJR 6	A joint resolution of house & Senate petitioning the U.S. Congress to review the social security laws for the purpose of eliminating sexual discrimination from the S.S. system	1/9/75	Holmes	1/17/75	DO PASS	1/17/75
HB 44	An act to submit to the qualified electors of Mt. an amendment to art.V, Sec 6 of the Mt. constitution to provide that the legislature shall meet in 30 day sessions, etc.	1/9/75	Teague	1/17/75	Deferred till 1/20/75 1/20-tabled DO NOT PASS	2/24/75
HB 70	An act repealing section 52-138, R.C.M. 1947, to remove the statute forbidding the sale of mortgaged chattels without the consent of the mortgage.	1/11/75	James Moore	1/17/75	DO PASS	1/17/75
HB 82	An act to conform the eminent domain power granted to regulated public utilities with the power granted dept of hiways, repealing various grants of eminent domain, etc.	1/13/75	Driscoll	1/21/75	DO PASS AS AMENDED	2/3/75
HB 87	An act making it an offense for a person to interfere with another's first amendment rights.	1/16/75	Menahan	1/20/75	DO NOT PASS	1/20/75
HB 99	An act raising from 18 to 21 the maximum age of juveniles subject to jurisdiction of dept of institutions when released to aftercare, etc.	1/16/75	Bardanouve	1/20/75	DO PASS	1/20/75

January 21, 1975

The seventh meeting of the House Judiciary Committee was called to order in Committee Room 436 of the Capitol Building at Helena, Montana on Tuesday, January 21, 1975 at 9:00 AM. Representative Meloy, acting chairman, presided while Chairman Huennekens presented a bill to another committee. All members were present except Representative Moore, absent, excused. Chairman Huennekens returned to preside at 9:25 AM.

Bills scheduled for hearing this date were House Bills Nos. 82 and 118, taken in this order.

HOUSE BILL NO. 82 Representative John B. Driscoll, District #91, is chief sponsor of this bill conforming eminent domain power granted to regulated public utilities with power granted the Department of Highways, stated he wished to propose some amendments which would clean up the bill, none are very substantive. (see Exhibit A). He stated this bill is an attempt to clean up the eminent domain statutes. You can't take away the power of condemnation so amended the bill in the first part which gives structure to corporation

The second portion of the bill begins on page 5, line 8 and lists public uses. He stated there was no question that the legislature has the right to determine public uses and cited a case "State of Montana vs. Cross & Nessen Company. Regulating utilities if they are small must first go before the Public Service Commission and they determine if the proposed project is for the public good.

Proponent James Shea, Public Service Commissioner from District #4, stated he sympathized with Representative Driscoll. He feels this bill has great merit, speaks for himself as an individual. The right of eminent domain has been abused. People are living in fear of the large corporations and condemnation of their land by the corporations. He feels this is a serious situation, in his opinion the mining companies have overstepped what is good for the general public. He wants to see mining prosper but not at the expense of the public. Pointed out that a year ago because of the coal situation in Eastern Montana the legislature took the power of eminent domain away from coal companies.

Opponents to this bill were Bill Romaine, representing the Montana Mining Association (see prepared statement); William Sternhagen, representing the Anaconda Company (see prepared statement); opponent Bob Holding, representing St. Regis Paper Company and Montana Power and Light, who stated he agrees with the two previous speakers regarding legal problems involved. Pointed out the problems logging companies have in getting access to logging roads, they'll spend \$50,000 to \$70,000 building a logging road. Since 1967 they have had the right of eminent domain under 93-9925, R.C.M. 1947.

Mr. Holding stated there is a five year limitation on temporary use of roads and pointed out that the logging industry is the third largest industry in the State of Montana.

Opponent Bob Corette, representing Montana Power, stated he agreed with everything said by the opponents. Stated he doesn't see any reason for this bill and that every state in the union has condemnation laws similar to Montana's. He went through the process of making an appeal.

Opponent Tom Winsor, representing the Montana Chamber of Commerce, stated he agreed with the other opponents and that he is quite concerned about removing rights to make irrigation projects. Opponent Lester Loble II, representing Montana Dakota Utilities Company left prepared statement (see attached). Opponent Gene Phillips, representing Pacific Power and Light, stated he was not sure he would agree the bill allows for certain appeals as stated by Mr. Corette. Opponent Jim Burnham, representing Mountain Bell, stated this bill would directly affect and restrict use of condemnation for business uses, if passed in present form cause exorbitant prices for microwave sights.

Opponent Ty Robinson, representing the Railroad Association, stated the railroads would find themselves in real jeopardy. Opponent P. L. MacDonald, representing the Anaconda Company, stated many condemnation actions in Butte since 1877 were necessary or there would not be any mining operation in Butte.

Representative Driscoll stated that two of his proponents had arrived and requested permission of the chair for their testimony. Proponent Torian Donohoe, representing the Stillwater Landowners, testified on behalf of this bill (see prepared statement). Proponent Evan McRae, a rancher from Rosebud County, representing himself, explained the letter he received over a year ago from Montana Water Storage Company (see exhibit). Their condemnation would involve over one third of his land for a reservoir, this is good farming and ranching land.

Representative Driscoll, in closing, stated he would like to leave material vague enough to be determined in the courts in public use of water. Pointed out that this legislature has the right to determine use of water. Read the Mongehalia vs. States decision. A break with tradition began when the rights of condemnation were taken from coal companies. He feels it is time to give the individual as many rights as the corporations have.

Hearing was then opened to questions from committee members. Upon questioning by Representative Kimble, Bill Romaine stated that this bill takes away ability of landowner to negotiate for a private road. Following question by Representative Kimble Mr. Corette explained the process of condemnation and that it was a long drawn out process. The Montana Power Company has the duty to serve the public and he feels this adds one more rather large step in getting condemnation.


Following question by Representative Rasmussen Representative Driscoll stated the Highway Department operates under more rigorous condemnation procedures. Upon questioning by Representative Vincent Mr. Shea stated that the Public Service Commission is behind in its work but that they are not afraid of work and are working long hours to bring them up to date. He stated he thinks the Commission will have more empathy for the public. Stated the corporation is not a person in any way, shape or form. On the right of eminent domain it is a club these corporations hold over the public. Representative Driscoll replied to question by Representative Scully that this bill requires a major portion of condemnation proceedings such as are set up for the highway department. Representative Halvorson learned upon questioning that the large corporations have not offered any amendments to this bill but it came up rather suddenly.

Following additional questions by committee members the hearing was then closed.

HOUSE BILL NO. 118 Representative Dennis Lester, District #37, stated this was a very simple bill which Representative McKittrick had asked him to sponsor. He stated this bill is to establish the presumption of joint tenancy of a motor vehicle when more than one name is listed on the title in order to help settle estates, it gives the right of survivorship.

No proponents. No opponents. Following brief questioning by committee members the hearing was closed.

Meeting was adjourned at 10:31 AM.


HERB HUENNEKENS
CHAIRMAN

HH:pb

NAME DENNIS A. LESTER

Bill No. HB 118

ADDRESS 1412 4TH AVE So.

Date 1/21/75

WHOM DO YOU REPRESENT? _____

SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITNESS STATEMENT

Name Orion Donohoe

Date 4/21/75

Address N.Y.C. 10011-59061

Support ? ☒

Representing Stillwater landowners

Oppose ? ☐

Which Bill ? HB 82

Amend ? ☐

Comments:

Nichols on Eminent Domain
Third Ed.
Sackman

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

MY NAME IS TORIAN DONOHUE, I AM A STUDENT AND RESIDENT OF THE STILLWATER VALLEY, AND AM HERE REPRESENTING THE LANDOWNERS OF THAT AREA AS A PROPONENT OF HOUSE BILL 82. AS RESIDENTS OF AN AREA WHERE THERE IS GREAT POTENTIAL FOR LARGE SCALE HARD ROCK MINING AND THE CONSTRUCTION OF CONCENTRATION FACILITIES WE FEEL THE REVISION OF THE PROVISIONS AND SCOPE OF THE EXERCISE OF EMINENT DOMAIN PROCEDURE ARE VITAL AS A PROTECTIVE MEASURE FOR US AS LANDOWNERS AND OUR WAY OF LIFE.

MINING IS NO LONGER THE SOLE PARAMOUNT INTEREST OF THIS STATE AND AS HAS BEEN SHOWN LONG AGO IN MONTANA THAT EVERYTHING THAT IS CALCULATED TO ENCOURAGE MINING IS NOT NECESSARILY SYNONYMOUS WITH THE ADVANCE OF THE GENERAL PROSPERITY AND THE WELFARE OF THE PEOPLE OF THIS STATE.

IN TYPICAL FASHION THE LARGE INTERESTS OF MINING WILL COME OUT LOUDLY PROCLAIMING THAT IF THIS PIECE OF LEGISLATION IS ENACTED THAT THE MINING INDUSTRY WILL BE DESTROYED IN THIS STATE - IF THIS BILL IS NOT PASSED OTHER INTERESTS STAND TO BE BADLY HURT AND POSSIBLY DESTROYED - NAMELY AGRICULTURE. LARGE AREAS OF AGRICULTURAL LAND THROUGHOUT THE STATE ARE BEING THREATENED BY MINING OPERATIONS OF VARIOUS TYPES. IT IS QUITE DIFFICULT TO MAINTAIN A VIABLE RANCHING OPERATION WHEN SOME OF A RANCHER'S BEST RANGELAND HAS BEEN CONDEMNED FOR A SMELTER SITE OR TAILINGS POND.

THE TIME HAS COME IN THIS STATE WHEN WE CAN NO LONGER AFFORD TO ALLOW A SELECT GROUP OF INTERESTS TO EXERCISE THIS GREAT MEASURE

OF BLIND POWER BUT RATHER MUST EXAMINE CLOSELY TWO QUESTIONS WHICH HERETOFORE HAVE RECEIVED VERY LITTLE CONSIDERATION IN THE HISTORY OF MONTANA - IS THE EXERCISE OF EMINENT DOMAIN ALWAYS IN THE BEST PUBLIC INTEREST AND SECONDLY IS THE LAND BEING USED IN THE HIGHEST AND BEST FORM POSSIBLE?

AGAIN, I STRONGLY URGE YOUR DO PASS RECOMMENDATION OF HOUSE BILL 82.

TORIAN DONOHUE

WITNESS STATEMENT

Name James M. Lane

Date Jan. 21

Address 141 - Fawcett, Winton

Support ? X

Representing Myself - N. P. R. C.

Oppose ?

Which bill ? H. B. 82

Amend ? X

Comments:

MONTANA WATER STORAGE CO.

P.O. Box 1315
Billings, Montana
59103

December 26, 1973

Rocker Six Cattle Co.
Forsyth, Montana

Attention Mr. Wallace McRae, President

Gentlemen:

In the past few days Winston L. Cox, James W. Reger and I (Jase O. Norsworthy) have caused the incorporation of a new Montana company under the name of Montana Water Storage Co. This new company has filed an Application for Beneficial Water Use Permit. The permit would be for water from the Tongue River diverted at a location in Section 28 of Township 1 South, Range 44 East, Rosebud County, Montana and stored in a reservoir to be constructed on Lay Creek.

This reservoir and diversion works would of necessity involve some lands owned by you. Because we became convinced that Montana's unused yet allocated, portion of water under the Tongue River-Yellowstone compact was substantial and might be shortly subjected to application in other jurisdictions and for beneficial use out of the State of Montana, we have had to work without disclosing our purposes to anyone. Having now filed the permit application, we do wish to be the first to inform you of our action and of the possible effect it may have on some of your lands. We would like to quote to you from the application paragraph 6.(c), "Applicant will acquire the property needed for its diversion works, pipelines and reservoir by private negotiations with the present owners thereof, and if this fails, by eminent domain or condemnation" (emphasis added).

The purpose of this letter is two-fold: We wish to be the first ones to inform you of our action, and, secondly, to emphasize our sincere desire to pursue to your satisfaction and ours a private negotiation of the lands involved which belong to you.

We anticipate a natural concern on your part, but ask that you defer judgement until we have had an opportunity to visit with you. We hope to be able to arrange such a visit in the coming days.

Sincerely,

MONTANA WATER STORAGE CO.

NAME P. MacDonald H/ Bill No. 82

ADDRESS 1625-11th Ave Helena Date 1/21

WHOM DO YOU REPRESENT? The American Co. & individually -

SUPPORT _____ OPPOSE X AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

NAME W.M. STERNHAGEN

Bill No. HB 82

ADDRESS 1625 11th Ave., HELENA, MT.

Date JAN. 21, 1975

WHOM DO YOU REPRESENT? THE ANACONDA Co.

SUPPORT _____ OPPOSE ☒ _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

MEMORANDUM RELATING TO EMINENT DOMAIN

January 21, 1975

1. HB 82 amends Section 15-2204 in such a way as to eliminate eminent domain availability to all corporations. A corporation can be a family corporation which may own farming property, ranching property, mining property or any other type of property which is set up for the purpose of continuing ownership in case of the death of one of the members of the family. Corporations are regulated in our laws far more than individuals and this bill, therefore, discriminates against corporations. A corporation is really a person in our law and there is no reason for this discrimination.

2. This bill also amends Section 93-9902 defining public use. A public use in general is where the use inures to the public benefit at large as distinguished from the individual ownership of the use. The United States Supreme Court in Strictly v. Highland Boy Gold Mining Company, 200 U.S. 527, stated:

"...that there might be exceptional times and places in which the very foundations of public welfare could not be laid without requiring concessions from individuals to each other upon due compensation, which under other circumstances, would be left wholly to voluntary consent."

Historically, the power of condemnation (eminent domain) was available only for those public uses specifically mentioned in our statutes. Now this House Bill 82 eliminates practically all of our historical and traditional public uses in Section 2 of the bill. The Supreme Court of the State of Montana in Butte-LA Mining Co. v. District Court, 103 Mont. 30, referring to eminent domain, stated:

"...the use for which the plaintiff desires to subject such property of the defendant to plaintiff's use is a more important public use than that for which defendant could lawfully use such property."

Why should this Legislature eliminate all of the public uses (i.e., private roads as access to farm property, bridges to be used by public, aqueducts, logging roads and railways) provided by the Montana Legislatures preceding it, and permit public use only to utilities and co-ops?

3. It must be understood and remembered that eminent domain is not just the taking of property but it is acquiring it with just and full compensation to the owner. In other words, the owner receives market value for his property. Market value is the amount that the property or the property interest would bring in a sale between a willing and well-formed buyer and a willing and well-informed seller. The false notion that eminent domain means that the owner receives nothing for his property is totally wrong.

4. Necessity of Eminent Domain for Mining Industry.

It must be clearly understood that there is no law on the books of the State of Montana which allows one person to condemn minerals owned by another. There are, in effect, two eminent domain provisions affecting the mining industry. One, which was established in 1877, that mining operators could condemn surface properties for necessary facilities to operate and own mining claims and without which a neighbor owner could prevent the development of a mining claim. The necessity of this right has been recognized historically in Montana by the legislators and the Supreme Court.

The eminent domain statute for mining purposes was passed in 1877. Mining was reaffirmed as a public purpose by the Montana Supreme Court in 1895 and many times thereafter and as recently as 1936.

As has been stated:

"---It is unremarkable that every state west of Nebraska and east of California has recognized the eminent domain power as a necessary instrument to mining operations." (Article by Robert S. Campbell, Jr., Attorney, Salt Lake City, Utah, and printed in the Mineral Law Institute)

Idaho, Nevada, Utah and Arizona all grant eminent domain for mining purposes, and it is contained in the Constitution of the State of Idaho.

The second provision of the eminent domain statute which was enacted in 1961, provided that the owner of minerals who did not own the surface, could condemn with adequate compensation, the surface only insofar as was necessary to obtain his minerals. Without this right in the law, the owner of minerals who did not own the surface could be prevented arbitrarily from mining his minerals. For example, which has been the case, the owner of one lot on the rim of the Berkley Pit could arbitrarily prevent continuation of the entire mining operation.

- - -

NAME

Jim Butcher

Bill No.

HB-82

ADDRESS

HELENA, MONT

Date

1-21-75

WHOM DO YOU REPRESENT?

MOUNTAIN BELL

SUPPORT

OPPOSE

2

AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

NAME Gene Phillips Bill No. H.B. 82
ADDRESS Kelispell, Montana Date 1/21/75
WHOM DO YOU REPRESENT? Pacific Power & Light
SUPPORT _____ OPPOSE X AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

NAME

John H. McK II

Bill No.

115 82

ADDRESS

100 176 Helena

Date

1/21/75

WHOM DO YOU REPRESENT?

Mont-Dakota Util. Co

SUPPORT

OPPOSE

☒

AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

General Telephone
Of the Northwest

NAME B. B. HEDDING Bill No. HB 52
ADDRESS 1715 5th - Helena, Montana Date 1-21-75
WHOM DO YOU REPRESENT? St. Regis Paper Co. & Mont. Light & Power Co.
SUPPORT _____ OPPOSE ☒ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

PRESENTED TO THE HOUSE JUDICIARY COMMITTEE
REGARDING HOUSE BILL 32

by

Tom Winsor, Public Affairs Manager
Montana Chamber of Commerce

We suspect that the motivation behind this bill is to remove the eminent domain powers of the giant mining companies, owning mineral rights but not the surface rights to the land, and to remove the eminent domain powers of the utilities before their transmission towers march again across the broad expanse of Montana. The Montana Chamber of Commerce is concerned, because invariably attempts to attack one part of free enterprise or land ownership rights has a far broader fall out effect.

We would not agree with the bill even if it only dealt with large mining interests and utilities trying to get power to the people of Montana. However, we would like to testify specifically on some of the fall out created by the bill.

Mr. Chairman and members of this committee I am not an attorney, nor have I had the opportunity to review these problems with an attorney. I'm just a layman reading legislation like many of you--but these things seem obvious, and unless I am totally mistaken, the bill deprives not just the big corporations of eminent domain powers, including those for Subchapter S Corporations--like the family farm, or the small main street family corporation business. (page 2, lines 5 and 6)

The bill deprives not just the big mining company from disturbing the surface land of another--it takes away an individuals right to get from the public highway to his land--or to get his goods from the land to market. (page 7, line 3)

Testimony

The bill would deprive the same individual the right to improve his property by irrigation or reclamation. (page 6, lines 4-10)

The bill impairs the potential of an irrigation district to build its system--a strange thing to take away from individuals and districts when as a State and Nation we want to increase agricultural productivity. (page 6, lines 4-10)

And the bill deprives not just the giant utility the right to get its power or phone lines across the land--the same right is ~~denied~~ ^{impaired for} the individual, the REA's and RTA's. (page 7, lines 5,6,11)

Therefore, the Montana Chamber of Commerce would certainly request, with respect, that this bill, House Bill 82, not be approved by this committee.

NAME William L. Rouse House BILL No. 32

ADDRESS 320 E 1th DATE 1-21-75

Helena

WHOM DO YOU REPRESENT? Montana Mining Association

SUPPORT? _____ OPPOSE? X AMEND? _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Mr. Chairman and members of the committee, my name is William L. Romine and I represent the Montana Mining Association.

I appear here today on behalf of the Association to oppose passage of House Bill 82. Basically, House Bill 82 will take away all rights of eminent domain from private persons and industry, no matter the need or desire, or the ultimate public benefit.

The bill also seems to limit the right of Eminent Domain as far as the public is concerned in several areas. Under Section 2, subsection 3 of the bill, found on page 5, all references to canals, aqueducts, flumes, ditches, water pipes, heat or gas, correcting banks of streams, and widening or deepening channels, road streets, or alleys appear to have been removed as far as county, city, towns and school districts are concerned. Although it may be argued that this is not the intent of the bill, since that language is specifically repealed, it can also be argued that this is the intent of the bill. I must confess I do not understand the reason for removing these public necessities from Eminent Domain.

On pages 6,7 and 8 of the bill there is an attempt to repeal all sections

bill. I must confess I do not understand the reason for removing these public necessities from Eminent Domain.

On pages 6,7 and 8 of the bill there is an attempt to repeal all sections concerning roads, railroads, wharves, docks, piers, bridges, flumes, ditches, aqueducts, tunnels, plus many others. If the legislature does repeal the right of private parties and industries to condemn property for these purposes, we are going to find that such persons will be unable to continue to operate businesses which have an ultimate public benefit.

As the law now stands, if a farmer needs a ditch across another's land to irrigate his own land, and if the other person will not agree to a price for such ditch, the farmer can undertake proceedings to determine the actual value of his taking. A court will then decide the true value of how much the farmer is taking from his neighbor, and will also determine whether or not the area where the ditch is to be built is a proper area with the least amount of damage to the other person's property and property rights. However, if you pass House Bill 82, we will find that this farmer no longer has any ability to bargain. He will be forced to pay whatever the other person wants for the permission to build this ditch. Even if the price amounts to Extortion, the farmer will have to pay if he wishes to irrigate his land. I am sure we will all agree

that the growing of crops has a definite ultimate public benefit. However, another person can through greed, jealousy or otherwise prohibit the farmer from performing this public necessity. He could, in fact, totally prevent the farmer from building the ditch. This is true with many other areas of private business, including telephone lines, telegraph lines, logging roads, and including areas for mining minerals.

I also notice that this bill takes away the right to condemn property for a private road leading from a highway to a residence or a farm. I have seen many cases, as a lawyer, where a person has no access to his property except across someone else's property. Many times a road already exists, but the owner of the other property will not allow its use. Under Eminent Domain, the farmer or other person can condemn that road for his own private use, paying an equitable and reasonable amount for such use. Under House Bill 82, you will no longer have that right, and will be prevented from reaching his home or his farm.

In the area of mining, I think we must agree that mining has an ultimate public use and benefit. We have a mineral shortage in this country, one which is becoming more accute every day. Mining employs many wage earners, adds to the tax roles, and has an ultimate public benefit. However, mining cannot operate if it

road for his own private use, paying an equitable and reasonable amount for such use. Under House Bill 82, you will no longer have that right, and will be prevented from reaching his home or his farm.

In the area of mining, I think we must agree that mining has an ultimate public use and benefit. We have a mineral shortage in this country, one which is becoming more accute every day. Mining employs many wage earners, adds to the tax roles, and has an ultimate public benefit. However, mining cannot operate if it cannot utilize water, roads, access, ditches, flumes and the other things necessary to operate.

We have operated for many many years under Eminent Domain in this state, and there does not appear to me any reason to repeal the Eminent Domain laws.

It must be remembered that under Eminent Domain actions there must be proof of necessity, lack of other means of accomplishing the same purpose, and adequate compensation to the condemned party.

The Association therefore, strongly opposes passage of House Bill 82, and urges the committee to give an unfavorable report.

WILLIAM L. ROMINE

WITNESS STATEMENT

Name

Address

Representing

Which Bill ?

Comments:

Date

Support ?

Oppose ?

Amend ?

Wayne C. Clapper

1244-1-81

The Anacosta Co.

HB 82

1/21/75

✓

NAME Ty Robinson Bill No. 82
ADDRESS 17 Edwards, Helena, Mont Date 1/21/25
WHOM DO YOU REPRESENT? MONTANA RR ASSN
SUPPORT _____ OPPOSE ☒ ANEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

NAME

Bob Powell

Bill No.

H.B. 82

ADDRESS

Butte, Montana

Date

WHOM DO YOU REPRESENT?

Montana Power Co.

SUPPORT

OPPOSE

AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

hold this bill. She stated she would keep an eye on it.

A substitute motion by Representative Kimble to defer action on House Bill No. 126 carried. Representative Rasmussen pointed out that the problem of small corporations is only addressed in the house bill.

Representative Kimble stated he objected to this bill because it appeared there would be a tax advantage with this contribution. Secondly, a small corporation is an individual or two in the community who have a personal interest in a very narrow part of the law and this is very disruptive. He has no small businesses in his district but other districts do.

SENATE BILL NO. 22 Diana Dowling explained that language was struck in House Bill No. 123 which required the codifier to assign catch lines so there wasn't any conflict any more. Feels the Legislative Council is in the best position to assign code numbers. She stated this is a session law which is even more important than the code laws. Discussion followed regarding what this bill says. A motion was made by Representative Kimble to amend by adding a new section 2 to read: "This act is effective on its passage and approval". Representative Hager suggested getting copies of section 30 of the session laws for the committee to work with. A substitute motion by Representative Moore that committee pass for today on this bill carried.

HOUSE BILL NO. 82 Representative Lory stated that it seemed the committee was amending and amending this bill and are just going after the Anaconda Company. Representative Lory moved DO NOT PASS which was seconded by Representative Seifert.

A substitute motion by Representative Day of DO PASS AS AMENDED was seconded by both Representatives Moore and Kimble. Representative Moore explained the proposed amendments. (see exhibit). Representative Day stated he would prefer the word "agriculture" rather than "irrigation" in the second amendment.

Representative Lory again stated that he felt the committee was just wasting time and spinning wheels on this bill, that the courts won't bow to any company. Representative Anderson stated this bill is just satisfying the people sitting around this table. Representative Scully stated this act just goes against a couple of corporations but that it is the most important practical bill we have worked on all session, he is not at ease with it.

Representative Day stated he thinks Representative Driscoll aimed this bill at the whole state, feels it is a necessary bill and the committee should pass it. Representative Kimble stated the committee shouldn't lose their perspective here,

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 32

A BILL FOR AN ACT ENTITLED: "AN ACT TO CONFORM THE EMINENT DOMAIN POWER GRANTED TO REGULATED PUBLIC UTILITIES WITH THE POWER GRANTED THE DEPARTMENT OF HIGHWAYS; REPEALING VARIOUS GRANTS OF EMINENT DOMAIN POWER TO PERSONS NOT PUBLIC UTILITIES, COOPERATIVES, OR PUBLIC AGENCIES PROVIDING FOR JUDICIAL REVIEW OF A PRESUMPTION OF NECESSITY; AMENDING SECTIONS 15-2204, 93-9902, AND 93-9910, R.C.M. 1947; AND REPEALING SECTIONS 50-801 THROUGH 50-816, R.C.M. 1947.

Amending subsections.

Respectfully report as follows: That HOUSE Bill No. 32

Be amended in the introduced bill as follows:

1. Amend page 2, section 1, subsection (d), lines 3 and 6.
Following: "situated"
Strike: "and to acquire property by proceedings in eminent domain"
Insert: ", and to acquire property by proceedings in eminent domain where such power is granted by law"
2. Amend page 6, section 2, subsection 4., lines 11 through 14.
Following: "Reservoirs"
Strike: ", necessary for collecting and storing water. Provided, however, that such reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land"
Insert: "necessary for agriculture and public water supplies"
3. Amend page 7, section 2, lines 3 and 4.
Strike: "6. Private roads leading from highways to residences or farms"

DO PASS (continued on page 2)

COMMITTEE ON JUDICIARY AMENDMENTS TO HOUSE BILL NO. 82

Insert: "5. Private roads leading from highways to residences or farms."

Renumber: Subsequent subsections.

4. Amend page 7, section 2, following line 4.

Insert: "6. Rights to construct, maintain and use ditches, canals, diversion systems, or laterals for agricultural or domestic uses."

Renumber: Subsequent subsections.

5. Amend page 7, section 2, line 15.

Strike: "13. Temporary logging roads"

Insert: "3. Temporary logging roads."

Renumber: Subsequent subsections.

6. Amend page 7, section 2, subsection 6., line 22.

Following: "cooperative"

Insert: " , "

7. Amend page 7, section 2, line 24.

Following: "and order"

Insert: "or certificate"

8. Amend page 7, section 2, subsection 6., line 24.

Following: "The order"

Insert: "or certificate"

9. Amend page 9, section 4, subsection (1), line 13.

Following: "furnishing"

Insert: "agricultural, wood products,"

10. Amend page 9, section 5, subsection (1), lines 21 through 23.

Following: "commission"

Strike: "or if the proposed use is regulated under the Utility Siting Act, from the board of natural resources and conservation"

Insert: "or a certificate of environmental compatibility and public need from the Board of Natural Resources and Conservation if the proposed use is regulated by the Utility Siting Act."

11. Amend page 9, section 4, subsection (2), line 24.

Following: "order"

Insert: "or certificate"

AS SO AMENDED
DO PASS

Motion carried.

The Speaker appointed Stoltz, Chairman, Kimble and Ellis to the joint conference committee.

Gunderson moved to suspend the rules to allow the introduction of a House Bill to be called the Family Farm Act.

The motion, requiring a two-thirds majority, failed by a vote of 66 to 34.

THIRD READING OF BILLS

The following bills having been read three several times, title and history agreed to, were disposed of in the following manner:

House Bill No. 79 failed to pass by the following vote:

Ayes: R. Baeth, W. Baeth, Bardanouve, Bradley, Brand, Dassinger, Driscoll, Dussault, Federico, Finley, Gunderson, Harper, Helmbrecht, Holmes, Huennekens, Johnson, Kelly, Kemmis, Kendall, Kimble, Kummerfeldt, Lester, Luebeck, Lynch, Magone, Meloy, Menahan, James Moore, Mular, O'Connell, Palmer, Quilici, Richards, Scully, Shelden, Sloan, South, Stoltz, Teague, Thomas, Travis, Vincent, Williams, Yardley, Mr. Speaker. Total 45.

Noes: Aageson, C. R. Anderson, J. Anderson, Asher, Babcock, Barrett, Bengtson, Bertelsen, Casey, Conroy, Day, Ellerd, Ellis, Ellison, Fabrega, Fagg, Fishbaugh, Gilligan, Gould, Guthrie, Gwynn, Hageman, Hager, Halvorson, Herlevi, Hubing, Jacobsen, Johnston, Kanduch, Kropp, Kvaalen, Lien, Lockrem, Lory, Lund, McFadden, Manuel, Marks, Mercer, Jack Moore, Murphy, Rasmussen, Robbins, Schye, Seifert, Sivertsen, Smith, Staigmiller, Tropila, Underdal, Wood, Wyrick. Total 52.

Paired: Driscoll, Aye; Bertelsen, No.

Excused: Gerke. Total 1.

Absent or not voting: Fleming, Wolfe. Total 2.

House Bill No. 82 passed by the following vote:

Ayes: R. Baeth, W. Baeth, Bardanouve, Bradley, Brand, Dassinger, Day, Driscoll, Dussault, Ellis, Fagg, Federico, Finley, Fleming, Gunderson, Gwynn, Hageman, Halvorson, Harper, Helmbrecht, Holmes, Hubing, Huennekens, Johnson, Kanduch, Kemmis, Kendall, Kimble, Kummerfeldt, Lester, Lien, Luebeck, Magone, Meloy, James Moore, Murphy, O'Connell, Palmer, Richards, Robbins, Shelden, Sloan, South, Staigmiller, Stoltz, Teague, Thomas, Vincent, Williams, Wolfe, Mr. Speaker. Total 51.

Noes: Aageson, C. R. Anderson, J. Anderson, Asher, Babcock, Barrett, Casey, Conroy, Ellerd, Ellison, Fabrega, Fishbaugh, Gerke, Gilligan, Gould, Guthrie, Hager, Jacobsen, Johnston, Kelly, Kropp, Kvaalen, Lockrem, Lory, Lund, Lynch, McFadden, Manuel, Menahan, Mercer, Jack Moore, Mular, Quilici, Rasmussen, Schye, Scully, Seifert, Sivertsen, Smith, Tropila, Underdal, Wood, Wyrick, Yardley. Total 44.

Paired: Meloy, Aye; Gerke, No.

Excused: Bertelsen. Total 1.

Absent or not voting: Bengtson, Herlevi, Marks, Travis. Total 4.

House Bill No. 134 passed by the following vote:

1975
Senate

44th

LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
5	3/5/75	3/12/75	3/13/75				3/12/75		
6	1/16/75	1/21/75	1/21/75				1/21/75		
7	1/16/75	1/21/75	1/21/75				1/21/75		
8	2/27/75	3/15/75	3/18/75					3/17/75	
10	3/7/75	3/15/75	3/24/75					3/19/75	
27	2/28/75	3/14/75	3/25/75					3/22/75	
31	1/20/75	1/28/75	2/4/75					2/1/75	
46	2/4/75	2/27/75	2/28/75						2/27/75
82	2/15/75	3/6/75	3/20/75					3/18/75	
99	1/27/75	2/1/75	2/6/75					2/5/75	
100	2/21/75	3/4/75	3/25/75					3/7/75	
102	2/10/75	2/28/75	3/5/75					3/4/75	
108	3/8/75	3/17/75	3/24/75					3/21/75	
110	2/4/75	3/7/75	3/13/75					3/11/75	
111	2/27/75	3/14/75	3/24/75					3/22/75	
118	2/1/75	3/5/75	3/6/75					3/5/75	
122	2/4/75	2/27/75	3/4/75					2/28/75	

(Use Separate Sheet for Senate, House Bills, and Resolutions)

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
March 6, 1975

The meeting was called to order by Senator Tower at 9:35 A.M.
All members of the committee were present.

The following bills were heard:

HB 228
HB 229
HB 309
HB 307
HB 82

HB 228 -- Representative James Moore of District 18 was the
& sponsor of HB 228 and HB 229. He stated that the
HB 229 purpose of the bills was to update the language in
Montana statutes regarding justice courts and police
courts in the areas of fees, jurisdictional limits,
and training of justices of the peace and police
judges.

Ms. Carol Nelson, Research Assistant to the Commis-
sioner on Lower Courts, presented written comments
by E. Gardner Brownlee, Co-Chairman of the Commis-
sioner on Lower Courts, which spoke favorably of the
bills (attached).

There were no further proponents and no opponents to
the bills.

HB 309 -- Representative John Scully of District 76 spoke next
on HB 309 of which he was the sponsor. He stated
that the purpose of the bill was to provide for dis-
qualification of justices, magistrates and justices
of the peace. He stated that in addition to adding
a new section 95-2010 regarding disqualification in
the lower courts, the bill amends 93-901, R.C.M.,
1947 in order to conform that section of the law with
its original intent.

There were no further proponents and no opponents to
the bill.

HB 307 -- Representative E. N. Dassinger of District 50 was the
sponsor of HB 307. Carrying the bill for Representa-
tive Dassinger, who was not present, was Mr. Tom Stoll
Chief of the Inheritance Tax Bureau of the Department
of Revenue, which requested the bill. Mr. Stoll state
that the purpose of the bill was to add an exception
clause to claims against estates for taxes and claims
founded on tort. He stated that the bill changes the
classification of claims on estates and clarifies and

Pending the arrival of Representative John Driscoll, sponsor of HB 82, the committee went into executive session.

EXECUTIVE SESSION

HB 228 -- Senator Turnage moved that HB 228 be concurred in. The motion was withdrawn, and the committee decided to pass consideration of HB 228 for the day.

HB 309 -- Senator Turnage moved to amend HB 309 by adding "other than a justice of the Supreme Court" in all places where the word justice stands alone. The motion was withdrawn.

Senator Turnage moved to amend HB 309, Section 2 by adding a new sub paragraph (5), "Nothing contained in (4) of this section shall apply to a justice of the Supreme Court." THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

Senator Turnage moved that HB 309 be concurred in as amended. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

With the arrival of Representative Driscoll of District 91, the hearing resumed to hear HB 82.

HB 82 -- Representative John Driscoll explained that the purpose of HB 82 is to change the law regarding public uses for which condemnation proceedings can be instituted and to conform eminent domain power granted to public utilities with the eminent domain power granted the Department of Highways.

Mr. Irv Alderson of Birney, Montana, representing the Tri-County Ranchers Association, presented a letter from Mr. Jase O. Norsworothy of the Montana Water Storage Co. which illustrated the problems ranchers have when corporations exercise their power of eminent domain (attached).

Mrs. Art Hayes, Jr. of Birney, Montana, also representing the Tri-County Ranchers Association, spoke as a rancher in favor of the bill.

Mr. Kit Muller, representing the Northern Plains Resource Council, spoke in favor of the bill, in particular those provisions relating to mining and water reservoirs.

Ms. Torian Donohue, representing the Stillwater Landowner Association, spoke in support of the bill and stated that agriculture is the most important industry in the State and must be preserved from unchecked development of mining.

Mr. Bill Romine, representing the Montana Mining Association, spoke against the bill and presented written testimony (attached).

Mr. Largey MacDonald, representing the Anaconda Company, stated that the purpose of eminent domain is to permit a mineral owner to gain access to his property. He stated that in the case of the Berkeley Pit, surface owners get more money for their property by settling out of court than they are awarded by a jury in condemnation proceedings. He stated that eminent domain is a necessary adjunct to mining. He stated further that without eminent domain, individual landowners could shut down the Anaconda Company operation.

Mr. Gordon Swanberg, representing the Montana Railroad Association, stated that railroads should be excluded from provisions of the bill. He objected to the definition of public necessity. He stated that subjecting railroads to hearings before the Public Service Commission in regard to the exercise of eminent domain would put the railroads at a competitive disadvantage in relation to the trucking industry. He submitted a political cartoon demonstrating this problem (attached). He suggested further that the bill would hinder development of geothermal energy.

Mr. Bob Corrette of the Montana Power Company stated that he agreed with Mr. Swanberg's statement regarding the difficulties imposed by the requirement that hearings on eminent domain be held before the Public Service Commission. He stated that this would overburden the Commission and bring it into an area with which it is not qualified to deal.

Mr. Gene Phillips, representing Pacific Power and Light Company, also objected to the hearings before the Public Service Commission, noting that the Commission is already behind in its work. He objected further to the provision regarding water reservoirs.

Mr. Lester Loble, representing Montana Dakota Utilities Co. and General Telephone Co., stated that condemnation powers should not be taken away from corporations.

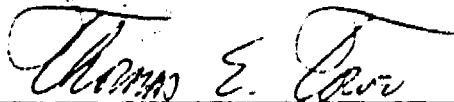
Mr. Jim Beck of the Department of Highways stated that the department neither supports nor opposes the bill but that it should be amended on page 9, lines 14 through 17.

Representative Driscoll in closing stated that citizens should have a right to object before the state condemns their property for corporate benefit. He rebutted statements made by the representatives of the Anaconda Company and the railroads. He stated that according to a court case in New York State, the necessity of a project shall

EB 82 -- be established before condemnation proceedings are instituted.

The hearing was closed on HB 82.

There being no further business, the meeting was adjourned to reconvene at 9:30 A.M., March 7, 1975.


Chairman

ROLL CALL

Judiciary COMMITTEE

~~SECOND HALF~~ - ^{44th} ~~1st~~ LEGISLATIVE SESSION 1975

Date 3/6/75

NAME	PRESENT	ABSENT	EXCUSED
Thomas R. Towe	X		
Joe R. Roberts	X		
V. E. Cetrone	X		
Margaret S. Warden	X		
Robert J. Brown	X		
Glen L. Drake	X		
Jean A. Turnage	X		
Michael Grealy	X		

Honor
Bill

221
374
52
309
309

SENATE

JUDICIARY

COMMITTEE

VISITORS' REGISTER

DATE 3/6/75

NAME	REPRESENTING	BILL #	(check one)	
			SUPPORT	OPPOSE
Mr. [unclear]	Montana Mining Assoc	H.B. 82		X
Les Koble	MDU Crew 701	H.B. 82		X
George [unclear]	The Anaconda Co.	H.B. 82		X
John [unclear]	Mountain Bell	H.B. 82		X
Gene Phillips	Pacific Power & Light	H.B. 82		X
Tom Stull	Dept of Rev.	H.B. 307	✓	
Harold E. Swarley	Mont. P.R. Co.	H.B. 82		X
John [unclear]	D. 176	309	X	
Bob Condit	Montana Power	H.B. 82		X
John [unclear]	Comm. on House Coms	225, 229	✓	
Don [unclear]	West Longview Co.	229		

SENATE JUDICIARY COMMITTEE

COMMITTEE

VISITORS' REGISTER

DATE 3/6/75

[illegible]

NAME: Irv Alderson DATE: March 6

ADDRESS: Bismarck, Mont.

PHONE: 406 754 2505

REPRESENTING WHOM? The County Ranchers

APPEARING ON WHICH PROPOSAL: _____

DO YOU: SUPPORT? 11582 AMEND? _____ OPPOSE? _____

COMMENTS: _____

NAME: Mrs Art Hayes Jr DATE: March 6 1975

ADDRESS: Birney, Montana 59012

PHONE: 406 - 984 - 2503

REPRESENTING WHOM? Tri County Ranchers Assoc.

APPEARING ON WHICH PROPOSAL: HB 82

DO YOU: SUPPORT? HB 82V AMEND? _____ OPPOSE? _____

COMMENTS: _____

NAME: Ken Miller DATE: 3/6/75

ADDRESS: Stephen Suddley, Dallas, Mtn. 59101

PHONE: 248-1154

REPRESENTING WHOM? National Police Reserve Council

APPEARING ON WHICH PROPOSAL: AB82

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: _____

NAME:

Torlan Donohue

DATE:

March 6

ADDRESS:

P.O. BOX 12

PHONE:

443-2520

REPRESENTING WHOM?

Stillwater Landowners

APPEARING ON WHICH PROPOSAL:

1/B82

DO YOU:

SUPPORT?

X

AMEND?

OPPOSE?

COMMENTS:

NAME William L. Romer House BILL NO. 82
ADDRESS 32nd St DATE 3-6-75

WHOM DO YOU REPRESENT? Montana Mining Association

SUPPORT? _____ OPPOSE? X AMEND? _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

This bill discriminates against the mining industry. It allows eminent domain use by farmers, logging companies, residential owners, transportation, communication and energy companies, but not mining companies. Mining is a legitimate business, and should have the same rights as these other businesses. Taking away the power of eminent domain can result in a miner not being able to reach his property or not being able to get water to his property. Either the state should ~~be~~ away with eminent domain entirely, or should grant the right to the mining industry also.

NAME:

Larry McDonald

DATE:

2/6/75

ADDRESS:

Alma

PHONE:

REPRESENTING WHOM?

The Prucoda Co.

APPEARING ON WHICH PROPOSAL:

AB-82

DO YOU:

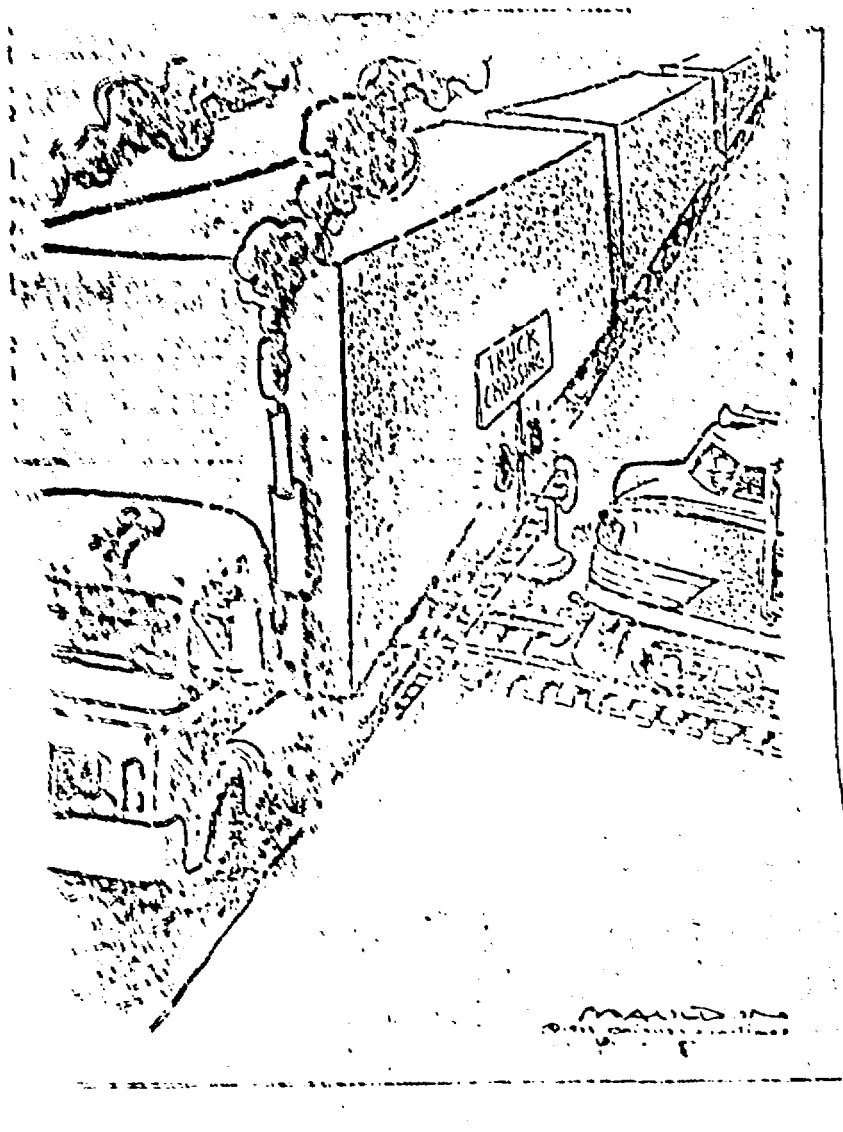
SUPPORT?

AMEND?

OPPOSE?

X

COMMENTS:



NAME:

Les Loble

DATE:

3/6/75

ADDRESS:

POB 176

PHONE:

442 0070

REPRESENTING WHOM?

MOU & Gen Tel of the NW

APPEARING ON WHICH PROPOSAL:

ITB 82

DO YOU:

SUPPORT?

AMEND?

OPPOSE?

X

COMMENTS:

Montana Bill

3/5

Montana H. R. 82

Eminent Domain
Use by Public Utilities

SYNOPSIS: Bill takes away power of eminent domain in many areas, principally mining and timber industry, (would require public utilities to obtain order from Public Service Commission allowing condemnation proceedings).

POSITION: Oppose. This bill would directly affect the company's ability, not only to condemn, but to negotiate for purchase of right of way, microwave sites, etc. The bill is an obvious attempt to play on the present public animosity towards the exercise of eminent domain by mining companies to severely restrict, eliminate or hinder the use of condemnation by all business interests and, with respect to public utilities, would add the requirement that condemnation be approved first by the Public Service Commission. This bill, if passed in present form, would make it virtually impossible for the company to acquire right of way or microwave sites at anything but exorbitant prices. The landowners would know that the Public Service Commission would probably deny the right and that without the effective power of eminent domain that the landowner could name his own price.

MINUTES OF THE MEETING
SENATE JUDICIARY COMMITTEE
March 17, 1975

The meeting was called to order by Senator Towe, Chairman, at 4:57 P.M. in Room 442 of the Capitol Building.

The Committee met in Executive Session to consider:

HB 560	HB 47
HB 640	HB 586
HB 8	HB 555
HJR 35	HB 571
HJR 45	HB 82

EXECUTIVE SESSION

Senator Towe introduced the self-implementing real estate disclosure bill which the Committee had agree to introduce. Senator Greely moved to introduce the bill. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE WITH SENATORS DRAKE AND TURNAGE ABSENT.

HB 560 -- Senator Roberts moved to pass consideration of HB 560 until the 75th day. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE WITH SENATORS DRAKE AND TURNAGE ABSENT.

HB 640 -- Senator Roberts moved HB 640 be not concurred in. THE MOTION CARRIED WITH SENATORS BROWN AND TOWE VOTING NO.

HB 8 -- Senator Greely moved to amend page 7, section 14, lines 15-20. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE WITH SENATOR BROWN ABSENT.

Senator Turnage moved to amend page 3, line 15. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE WITH SENATOR BROWN ABSENT.

Senator Drake moved to insert "political ideas" following "creed" wherever it appears in the bill. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE WITH SENATOR BROWN ABSENT.

Senator Greely moved HB 8 be concurred in as amended. THE MOTION CARRIED ON A ROLL CALL VOTE WITH SENATOR BROWN ABSENT.

HJR 35 -- Senator Turnage moved HJR 35 be concurred in. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE WITH SENATOR BROWN ABSENT.

HJR 45 -- Senator Turnage moved to amend page 2, line 13, by inserting "Montana" before legislature and throughout the bill as it appears and to insert on page 2, following line 13 the material on the attached Committee Report. THE MOTION

HJR 47 -- Senator Turnage moved HJR 47 be not concurred in. WITH SENATORS CETRONE AND WARDEN VOTING NO, AND SENATOR BROWN ABSENT, THE MOTION CARRIED ON A ROLL CALL VOTE.

HB 586 -- Senator Greely moved to strike "with intent to sell", lines 13 and 14. WITH SENATOR ROBERTS VOTING NO, AND SENATOR BROWN ABSENT, THE MOTION CARRIED ON A ROLL CALL VOTE.

Senator Greely moved HB 586 be concurred in as amended. THE MOTION CARRIED ON A ROLL CALL VOTE WITH SENATOR TUPNAGE VOTING NO AND SENATOR BROWN ABSENT.

HB 555 -- Senator Drake moved to amend page 4, line 20 by inserting "(marihuana)" following "marijuana". THE MOTION CARRIED ON A ROLL CALL VOTE WITH SENATORS GREELY AND CETRONE VOTING NO AND SENATOR BROWN ABSENT.

Senator Greely moved HB 555 be concurred in as amended. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE WITH SENATOR BROWN ABSENT.

HB 571 -- Senator Turnage moved HB 571 be not concurred in. Senator Drake made a substitute motion to amend section 2, line 19 by inserting "allowed by law for state employees" and line 13 by striking "charter"; and the title lines 6, 7 and 8. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE WITH SENATOR BROWN ABSENT.

Senator Drake moved HB 571 be concurred in as amended. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL BOTE WITH SENATOR BROWN ABSENT.

HB 82 -- Senator Greely moved to adopt the amendments as shown on the attached Committee Report. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE WITH SENATOR BROWN ABSENT.

Senator Greely moved HB 82 be concurred in as amended. A TIE VOTE RESULTED WITH SENATORS CETRONE, DRAKE AND TURNAGE VOTING NO AND SENATORS ROBERTS, WARDEN AND GREELY VOTING AYE. Senator Greely moved consideration of HB 82 be passed for the day. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE WITH SENATOR BROWN ABSENT.

There being no further business, the meeting adjourned to reconvene March 18, at 9:30 A.M.



Thomas E. Towe, Chairman

Date: 3/17/79 House Bill No. 52 Title _____

	YES	NO
THOMAS E. TOWE	X	
JOE E. ROBERTS	X	
V.E. CETRONE	X	
MARGARET S. WARDEN	X	
ROBERT J. BROWN		
GLEN L. DRAKE	X	
JEAN A. TURNAGE	X	
MICHAEL GREELY	X	

Bill Pakyano
Secretary

Thomas E. Tami, Jr.
Chairman

Motion: by Senator Greely to amend
this bill as shown on the
attached committee report.

(include enough information on motion—put with yellow copy of committee report.)

Date 3/17/75 House Bill No. 32 Title _____

NAME	YES	NO
THOMAS E. TOWE		
JOE R. ROBERTS	y	.
V. E. CETRONE		y
MARGARET S. WARDEN	y	
ROBERT J. BROWN		
GLEN L. DRAKE		x
JEAN A. TURNAGE		x
MICHAEL GREELY	y	

Bill Roberts
Secretary

Thomas E. Towe
Chairman

Motion: by Senator Greely that H.R. 32 be
passed as amended

Date 3/17/75 Three Bill No. 82 Time

	YES	NO
THOMAS E. TOWE	y	
JOE R. ROBERTS	y	
V.E. CETRONE	y	
MARGARET S. WARDEN	y	
ROBERT J. BROWN		
GLEN L. DRAKE	y	
JEAN A. TURNAGE	y	
MICHAEL GREELY	y	

Jim Bohannon
Secretary

Thomas E. Towe Jr.
Chairman

Motion: by Senator Greely that considera-
tion of HB 52 be passed for the day.

March 20

1975

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE

Bill No. 82

Respectfully report as follows: That HOUSE Bill No. 82,

third reading, be amended as follows:

1. Amend page 6, section 2, line 13.
Following: line 12
Strike: "Sites"
Insert: "Railroads and sites"
2. Amend page 7, section 2, line 9.
Following: "USE"
Insert: "pipelines, aqueducts,"
3. Amend page 7, section 2, line 10.
Following: "AGRICULTURAL"
Insert: ", industrial"
4. Amend page 8, section 2, line 1.
Following: "TEMPORARY"
Insert: "easements for"

EX-100

5. Amend page 8, section 2, line 1.
Following: "LOGGING"
Insert: "or mining"
6. Amend page 8, section 2, line 1.
Following: "ROADS"
Insert: "for such time as the court may determine"
7. Amend page 8, section 2, line 4.
Following: "cooperative"
Strike: " , RAILROAD,"
8. Amend page 8, section 2, line 16.
Following: line 16
Insert: "11. Development of geothermal energy sources.

12. To mine and extract ores, metals or minerals owned by the plaintiff located beneath or upon the surface of property where the title to the surface vests in another and where actual mining of these ores, metals or minerals or of the contiguous body of ores, metals or minerals was undertaken for a total of at least four (4) months prior to the effective date of this act provided, however, the use of the surface for strip mining or open pit mining of coal is not a public use and eminent domain may not be exercised for this purpose. "Strip mining" or "open pit mining" means any mining method or process in which the strata or overburden is removed or displaced in order to extract ores, metals or minerals."

9. Amend page 9, section 3, line 15.
Following: "under"
Strike: "sections 32-3904 or"
Insert: "section"
10. Amend page 9, section 3, line 22.
Following: "PROBUSTE"
Strike: "railroad,"

AND AS SO AMENDED, BE CONCURRED IN

CHAIRMAN

Thomas E. Piro